

MAIL AND E-MAIL SOLICITATIONS

Mail and E-Mail Sales Practices

Overview

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates unfair and deceptive business practices. DATCP rules regulate mail solicitations that promote the sale of consumer goods or services. These rules are found in Wisconsin Administrative Code chapter ATCP 127. Rule violators may be prosecuted, and there is a private remedy for consumers.

ATCP 127 does the following:

- Requires disclosures to consumers.
- Prohibits deceptive sales practices.
- Provides a 3-day right to cancel.
- Prohibits unauthorized withdrawal of funds from consumer accounts.
- Regulates prize offers.
- Requires timely delivery of ordered merchandise.

ATCP 127 regulates mail solicitations to Wisconsin consumers, regardless of where the solicitations originate. ATCP 127 applies to traditional mail, handbills, e-mail or fax solicitations. But ATCP 127 does **not** apply to any of the following (other laws may apply):

- Mass advertisements (such as newspaper ads or Internet home pages) that are not addressed to individual consumers or consumer residences.
- Transactions at a seller's regular place of business.
- Transactions at an established public market, such as a farmer's market.
- Catalog sales.
- Mail communications initiated by a consumer, unless prompted by the seller's prior direct mail solicitation to the consumer.
- Mail solicitations that merely invite consumers to the seller's regular place of business.
- The delivery of goods or services that a consumer purchased in a transaction not covered by ATCP 127.

- Persons who are not in the “business” of selling. For example, ATCP 127 does not apply to consumers holding occasional garage sales.
- Business-to-business sales.
- Banks, savings and loan associations, credit unions, insurance companies, public utilities or telecommunications carriers whose activities are exempt under Wisconsin Statutes section 93.01(1m).
- Real estate sales, other than sales of cemetery lots and “time shares” as defined in Wisconsin Statutes section 707.02(24).
- Securities sold in compliance with Wisconsin Statutes chapter 551, or franchise investments sold in compliance with Wisconsin Statutes chapter 553.
- A newspaper subscription that a consumer can cancel at any time without penalty.

Opening Disclosures

A mail solicitation must disclose all the following in writing:

- The name of the principal seller.
- That the seller is offering or promoting the sale of consumer goods or services.
- The kind of goods or services that the seller is offering or promoting.

Disclosures Prior to Sale

In a mail transaction, a seller must disclose all the following in writing before the consumer enters into any purchase contract, and before the seller takes the consumer’s credit card number or accepts any payment from the consumer:

- The nature and quantity of the consumer goods or services included in the sale.
- The total cost to purchase and receive the consumer goods or services.
- All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any. Cost disclosures in consumer credit transactions must comply with federal law and Wisconsin Statutes chapter 422. **For more information about credit transactions, see Consumer Law topic Money and Credit.**
- The name and mailing address of the principal seller.

- The seller's policy related to refunds, cancellations, exchanges and repurchases if any of the following apply:
 - The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.
 - The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

Language Other Than English

If the primary language used in a mail transaction is not English, the seller must make the pre-sale disclosures in the language primarily used.

Prize Promotions

A mail solicitation seller may not violate the lottery law, Wisconsin Statutes section 945.02(3). Nor may the seller violate the prize notice law, Wisconsin Statutes section 100.171. A seller may not misrepresent the material terms of a prize promotion. **For more information on prizes and sweepstakes, see Consumer Law topic Prizes and Sweepstakes.**

Unauthorized Payment

In a mail transaction, no seller may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization.

Timely Delivery of Ordered Merchandise

Mail order merchandise must be delivered on a timely basis, according to Wisconsin Statutes section 100.174. **For more information, see Timely Delivery of Ordered Merchandise under Mail and E-Mail Solicitations.**

Credit Card Laundering

ATCP 127 prohibits "credit card laundering" in mail transactions. In "credit card laundering" schemes, unscrupulous sellers gain access to the credit card system (from which they would normally be excluded) by processing credit card transactions under the name of another merchant.

A merchant may not present for payment, to a credit card system, any credit card sales draft generated by a mail solicitation transaction that is not a sale by that merchant to that credit card holder. No seller may obtain access to a credit card system under the name of another merchant unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed by the credit card system operator.

Misrepresentations

A mail solicitation seller may not do any of the following:

- Misrepresent the seller's identity, affiliation, location or characteristics.
- Misrepresent the nature or purpose of a mail solicitation.
- Misrepresent the nature or terms of a mail transaction, or any document related to that transaction.
- Misrepresent the cost of goods or services offered or promoted by the seller, or fail to disclose material costs payable by the consumer.
- Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by the seller.
- Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by the seller.
- Misrepresent the material terms of the seller's refund, cancellation, exchange, repurchase or warranty policies.
- Misrepresent that the seller is offering consumer goods or services free of charge or at a reduced price.
- Misrepresent that the seller is affiliated with, or endorsed by, any government or 3rd-party organization.
- Misrepresent that the seller has specially selected the consumer, or is making a special offer to the consumer.
- Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all the following apply:
 - The seller first makes all the opening disclosures required by this rule.
 - The seller discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.
 - The seller discloses that the seller is attempting to sell goods or services, or to identify sales prospects, if that is the case.
- Misrepresent any material aspect of an investment opportunity, including risk, liquidity, earnings potential or profitability.

- Fail to disclose, in connection with every purported offer of free goods or services, any costs that the consumer must incur and any conditions that the consumer must meet in order to receive those free goods or services.
- Make any false, deceptive or misleading representation to a consumer.

Prohibited Practices

ATCP 127 prohibits a mail solicitation seller from doing any of the following:

- Threatening, intimidating or harassing a consumer.
- Requesting or receiving payment for “loan finder” services until the consumer actually receives the promised loan.
- Failing to give or honor a 3-day right to cancel notice, if required under Wisconsin Statutes section 423.203.

Recordkeeping

A mail solicitation seller must keep copies of the following records for at least 2 years:

- Mail solicitations and other documents provided to consumers in mail transactions.
- The following records related to each prize that the seller offers or awards to consumers if the seller represents, to any consumer, that the prize has a value of \$25 or more:
 - An identification of the prize.
 - The name and last known address of every consumer who received the prize.
 - The name and last known address of every consumer who purchased goods or services in a mail transaction, the purchase date, the date on which the seller provided those goods or services to the consumer, and the amount paid.
 - Documentation that the seller has systems and procedures in place to ensure compliance, in the ordinary course of business, with the timely delivery requirements in Wisconsin Statutes section 100.174.

Rule Background

ATCP 127 is a general order (rule) adopted under Wisconsin’s Unfair Business Practices Law, Wisconsin Statutes section 100.20.

- DATCP adopted a prior version of ATCP 127 in 1972 (DATCP Docket No.1004.)
- DATCP amended ATCP 127 in 1972 (Docket No. 1034) and in 1976 (Docket No. 1202).
- DATCP completely repealed and recreated ATCP 127 in 1999 (DATCP Docket No. 97-R-8)

Rule Enforcement

Private Remedy

A person who suffers a monetary loss because of a seller's violation of ATCP 127 may sue the seller under Wisconsin Statutes section 100.20(5), and may recover twice the amount of the loss, together with costs and attorneys fees.

Injunction and Restitution

DATCP may seek a court order under Wisconsin Statutes section 100.20(6), enjoining violations of ATCP 127 and ordering a seller to pay restitution to consumers. The Department of Justice or a district attorney may represent DATCP in court.

Civil Forfeiture

DATCP or any district attorney may start a court action under Wisconsin Statutes section 100.26(6), to recover a civil forfeiture from a seller who violates ATCP 127. The court may impose a civil forfeiture of up to \$10,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.

Criminal

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.26(3), against a seller who violates ATCP 127. A violator may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.